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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,143	03/15/2004	Lyle Townsend	TOWL 101CIP	2186

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EXAMINER


ARK, DARREN W

ART UNIT PAPER NUMBER

3643

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/801,143	Applicant(s) TOWNSEND, LYLE	
	Examiner Darren W. Ark	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: no. 65, large cavity is not shown in any of the figures. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities:

Page 5, line 7, first occurrence of "23" should be changed to "22".

Page 7, line 21, second occurrence of "lid" should be changed to "bottom".

Appropriate correction is required.

Claim Objections

3. Claims 1-3, 9, 13 are objected to because of the following informalities:

Claim 1, line 7, the term "thereof" should be inserted after "perimeter edge".

Claim 2, line 1, "2" should be replaced with "1".

Claim 3, line 1, "d" should be deleted at the end of the term "plated".

Claim 3, line 3, "on" should be inserted after "formed".

Claim 9, line 1, "9" should be replaced with "8".

Claim 13, line 9, "an" should be "and".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the phrase "to form a tunnel under said bottom member when said bottom member is placed on a flat ground surface" renders the claim vague and indefinite since it is unclear how the tunnel is formed. The phrase should be rewritten as "to form a tunnel under said bottom member when said bottom member is placed on a flat ground surface, the tunnel defined by the bottom member and the ground surface". Also see claim 14 for the same problem.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 9, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hyatt 5,953,854.

Hyatt discloses a bottom member (10) with two tunnel cavities (14) which are concave in cross section (curved like the inner surface of a ball) and extending centrally on the bottom member (see Fig. 3), to form a tunnel under the bottom member when it is placed on a flat ground surface (see Figs. 1, 4, 5), the bottom member including an outer pest opening (20) along a perimeter edge adjacent the tunnel cavity (on opposed sides of 10), and also an inside pest opening (larger space defined underneath 11 that is between 12 & 14) over each tunnel cavity; a dome shaped upper lid member (1) having an outer surface that simulates a rock (round like some rocks); and a means for terminating a pest (26 with insecticide) inside the cavity; a lock mechanism (cover 1 is permanently affixed by adhesive, sonic welding).

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Washburn 6,374,536.

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Washburn discloses a bottom member (17) with two tunnel cavities (two left and right sections of 15) which are concave in cross section (curved like the inner surface of a ball) and extending centrally on the bottom member (axes of the tubular pipes intersect), to form a tunnel under the bottom member when it is placed on a flat ground surface (sections of 15 are in the form of tunnels and are capable of being placed on a ground surface), the bottom member including an outer pest opening (aperture 18 on 17; see col. 4, lines 9-23) along a perimeter edge adjacent the tunnel cavity (on left and right sides of 17), and also an inside pest opening over each tunnel cavity (space located on either side of 46 in Fig. 1); a dome shaped upper lid member (26) having an outer surface that simulates a rock (round like some rocks); and a means for terminating a pest (46 impregnated with termiticide) inside the cavity.

9. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hirose et al. 5,921,018.

Hirose et al. discloses a bottom member (1) with two tunnel cavities (4, 5) which are concave in cross section (curved like the inner surface of a ball) and extending centrally on the bottom member (see Figs. 2, 5), to form a tunnel under the bottom member when it is placed on a flat ground surface (sections of 4, 5 are in the form of tunnels and are capable of being placed on a ground surface), the bottom member including an outer pest opening (12) along a perimeter edge adjacent the tunnel cavity (on left and right sides of 17), and also an inside pest opening (3) over each tunnel cavity; a dome shaped upper lid member (11) having an outer surface that simulates a

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rock (round like some rocks); and a means for terminating a pest (termiticide) inside the cavity.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 4-7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hyatt 5,953,854 in view of Simpson 6,145,242.

Alternatively, Hyatt does not disclose the lid member having an outer surface that simulates a rock. Simpson discloses a lid member (24) with an outer surface that simulates a rock. It would have been obvious to a person of ordinary skill in the art to modify the lid member of Hyatt such that its outer surface simulates a rock in view of Simpson in order to blend the device of Hyatt with the surroundings without drawing the attention to the need for pest management.

12. Claims 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hyatt 5,953,854 in view of Thalheimer 1,960,464.

Hyatt does not disclose means for attaching the pest trap to the ground. Thalheimer discloses a trap (10) with means for attaching the trap (nail/stake 31) to the ground (32). It would have been obvious to a person of ordinary skill in the art to modify

the bait station of Hyatt such that it has means for attaching the trap to the ground in view of Thalheimer in order to anchor the bait station at the desired position.

13. Claims 1, 4-7, 12, 14, 15, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6,145,242 in view of Hyatt 5,953,854.

Simpson discloses a bottom member (26) with two tunnel cavities (32, 34; also see Fig. 6 with 42 forming part of the tunnel & other of 32, 34), outer openings (32), and inside pest opening (defined above 42); a dome-shaped upper lid member (24) having an outer surface that simulates a rock; means for terminating a pest located inside the cavity (bait block to be engaged by 80; also well 44 for holding granules), but does not disclose the two tunnel cavities being concave in cross section or forming tunnels under the bottom member when placed on a flat surface. Hyatt discloses two tunnel cavities (14) being concave in cross section and forming tunnels under the bottom member when placed on a flat surface. It would have been obvious to a person of ordinary skill in the art to modify the two tunnel cavities of Simpson such that they are concave in cross section and form tunnels under the bottom member when placed on a flat surface in view of Hyatt in order to make it more difficult for the poisoned bait to be removed from the bait station due to spilling.

In regard to claim 12, Simpson discloses a lock mechanism (56, 58, 60, 62).

14. Claims 2, 3, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6,145,242 in view of Hyatt 5,953,854 as applied to claim 1 above, and further in view of Nelson et al. 5,806,237.

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Simpson and Hyatt do not disclose a hinge between the bottom member and the lid member. Nelson et al. discloses a hinge between a bottom member (20) and a lid member (70) with a hinged plate (part where 34 is located) having a plurality of axles (solid portions between slots 34 and upper rear edge of 20) and a plurality of arms (72) on the lid member. It would have been obvious to a person of ordinary skill in the art to modify the bait station of Simpson and Hyatt such that there is a hinge between the bottom member and lid member in view of Nelson et al. in order to provide means for opening the bait station so that the inner cavity may be accessed for service yet maintain the position of the lid member relative to the bottom member so that it is not easily misplaced and thus lost.

In regard to claim 13, Simpson and Hyatt do not disclose the lock mechanism including a biased latch in the lid member, a keyhole in the lid member, a key, or a clasp on the bottom member. Nelson et al. discloses a biased latch (100) in the lid member (70), a keyhole (71) in the lid member (70), a key (110), and a clasp (60) on the bottom member (20). It would have been obvious to a person of ordinary skill in the art to modify the bait station of Simpson and Hyatt such that it has a lock mechanism between the bottom member and lid member in view of Nelson et al. in order to provide means for preventing children or undesirable persons from opening the bait station.

15. Claims 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6,145,242 in view of Hyatt 5,953,854 as applied to claim 1 above, and further in view of Hight 6,266,917.

Simpson and Hyatt disclose trays on the bottom member (see compartments in Simpson and Hyatt), but do not disclose a spring activated trap. Hight discloses a disguised pest control system wherein the housing includes a decorative unit comprising a planter compartment with a plant (4; see Figs. 1, 2, & 4) which is supported on a pedestal (6) and also pest control devices housed within the pedestal compartment (traps 28 with spring action trapping arm 32). It would have been obvious to a person of ordinary skill in the art to employ the spring-loaded trap of Hight in the device of Simpson in order to provide alternative trapping means which will kill and retain the rodents inside the housing so that they do not escape and become unsightly to the public.

16. Claims 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6,145,242 in view of Hyatt 5,953,854 as applied to claim 1 above, and further in view of Hart 1,511,123 or Wiemer 1,349,177.

Simpson and Hyatt disclose the holding tray (28 or 100) located on the flat bottom (26) and being disposed in the inner cavity, but do not disclose a spring trap held by a holding tray located on the bottom member. Hart and Wiemer disclose concealed traps (trap with jaw 18 AND trap with jaw 19) in a housing (10, 12, 17 AND 10) held by a holding tray (11 or 10 AND 14) on the bottom member (10 OR 14). It would have been obvious to a person of ordinary skill in the art to employ the trap of Hart or Wiemer held by a tray which is inserted through a bottom opening in the device of Simpson and Hyatt in order to provide alternative trapping means which will kill and retain the rodents inside the housing so that they do not escape and become unsightly to

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the public and also to provide a means for easily taking the trap out for rodent disposal without totally dismantling the housing.

17. Claims 10, 11, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6,145,242 in view of Hyatt 5,953,854 as applied to claims 1 and 15 above, and further in view of Miller et al. 5,657,575.

Simpson and Hyatt disclose trays for holding bait, but do not disclose the means for terminating a pest being at least one sheet of bait paper for targeting insects or slugs. Miller et al. discloses a bottom member with a tray (11) with at least one sheet of bait paper for targeting insects or slugs (disc 25 made of plastic and paperboard). It would have been obvious to a person of ordinary skill in the art to employ the at least one sheet of bait paper of Miller et al. in the station of Simpson and Hyatt in order to provide means for targeting specific insects such as snails and slugs.

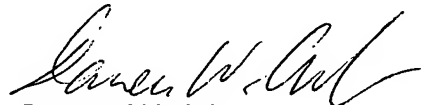
18. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson 6,145,242 in view of Hyatt 5,953,854 as applied to claim 14 above, and further in view of Johnson 6,493,988.

Simpson and Hyatt do not disclose the holder for holding a report card in the inside cavity. Johnson discloses a holder (58) for holding a report card (22) in the inside cavity (in 20). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the holder for holding a report card of Johnson in the bait station of Simpson and Hyatt in order to provide means for keeping track of the service history of the bait station while preventing the card from being easily lost.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA